



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**WAGGONER CARR
ATTORNEY GENERAL**

February 23, 1966

Mr. Frank R. Booth
Executive Director
Texas Water Rights Commission
Austin, Texas

Opinion No. C-624

Re: Whether the maximum use fees prescribed by Article 7532 V.C.S. are applicable to each application for a permit or whether the use of the word "project" in Article 7534 V.C.S. means that a combined maximum fee of \$1,500 applies to all three applications.

Dear Mr. Booth:

In your opinion request, we were advised that the Commission has received three applications for permits to use and divert water from the Cooper reservoir in the Sulphur River Basin. The Sulphur River Municipal Water District has applied for a permit to impound water and divert it for municipal and industrial purposes. The City of Irving has also applied for a similar permit, and the North Texas Municipal Water District has requested water for industrial purposes only. Your letter further states that the maximum "use" fees under Article 7532, Vernon's Civil Statutes, for the Sulphur River Municipal Water District and the City of Irving would be \$1,700 each.

You have requested our opinion as to whether the maximum use fees described in Article 7532 are applicable to each application for a permit or whether the use of the word "project" in Article 7534, Vernon's Civil Statutes, means that a combined maximum fee of \$1,500 applies to all three applications.

We will not quote all of Article 7532. It is sufficient to note that it provides for a comprehensive schedule of "filing" fees to be paid to the Board and in addition thereto certain other fees based upon the contemplated use of the water. Said fees are to be paid "on each application for a permit to acquire a water right."

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Five categories of water use are listed with a specific fee for each category. The next to the last paragraph thereof provides:

"The maximum fees for any use of water under a permit shall not exceed \$1,500 and for each additional use under the same permit for which such maximum fee is paid the fee shall not exceed \$200 in addition to said sum of \$1,500." (Emphasis Added)

Article 7534 on the other hand, reads, in part, as follows:

"The fees to be paid for filing in the office of the State Board of Water Engineers of applications for permits for the storage, diversion and use of water shall not exceed the sum of \$1,500 for any one such application, permit, or project. - - -" (Emphasis added)

The term "project" is defined in Webster's Third International Dictionary in part as:

"A devised or proposed plan - - a planned undertaking - - an undertaking devised to affect the reclamation or improvement of a particular area of land.- -"

It would therefore appear that there are two areas of conflict between Articles 7532 and 7534. First: Article 7534 limits the maximum fee to be charged on any one application or permit to \$1,500, while Article 7532 expressly authorizes additional fees, not to exceed \$200, to be charged for each additional use of water under the same permit. The additional "use" fees are expressly made conditional upon the maximum use fee of \$1,500 first being paid. Second: Article 7532 provides that the enumerated fees are to be paid to the Board upon "each application for a permit- - -", while, if the usual definition is given to the word "project", Article 7534 would limit the maximum fee charged to \$1,500 regardless of the number of applications filed or permits granted.

Where there is a clear and irreconcilable conflict between legislative enactments upon the same subject matter, the general rule is that the last expression of the Legislature prevails. Halsell v. Texas Water Commission, 380 S.W.2d 1, (Tex. Civ. App., 1964, error ref., n.r.e.); 82 C.J.S., 477 Statutes, Sec. 286 states the rule as follows:

"An implied repeal is one which takes place when a new law contains provisions which are contrary to, but do not expressly repeal, those of a former law - - and a repeal by implication is as effective as an express repeal. Whether it has been so repealed is a question of legislative intent."

Article 7534 was originally enacted as Section 1, Acts 1920, 36th Leg., 3rd C.S., ch. 46, p. 87, and provided for a maximum fee of \$6,000 upon any one application, permit or project. Sections 2 and 3 thereof were codified as Articles 7535 and 7536, Vernon's Civil Statutes. Section 1 was subsequently amended by the Acts of 1923, 38th Leg., ch. 136, p. 281, and the maximum fee was lowered to \$1,500.

Article 7532 was enacted in 1925 as Section 4 of the Acts of 1925, 39th Leg., ch. 136, p. 342, amending Section 41 of Acts 1917, 35th Leg., ch. 88, p. 221. The new section was a complete revision of the old section. A new schedule of rates was applied; the categories of water use were expanded; and the last two paragraphs of the present article were added. Section 7 of the Acts of 1925 contained a general repealing clause of "all laws in conflict with the provisions hereof."

A general repealing clause is effective to repeal all prior general laws, or parts thereof, which are repugnant to, and inconsistent and irreconcilable with the repealing statute. 82 C.J.S. 476, Statutes, Sec. 285; First National Bank v. Lee County Cotton Oil Co., 274 S.W. 127 (Comm. App., 1925); State Board of Insurance v. Adams, 316 S.W.2d 773 (Tex. Civ. App., 1958, n.w.h.).

As noted above, in order for the rule of implied repeal to apply, the two enactments must be upon the same subject and must be repugnant to, and inconsistent and irreconcilable with each other. Articles 7532 and 7534 treat of the same subject matter and are repugnant to and inconsistent with each other. The next to the last paragraph of Article 7532 and Article 7534 both set forth the maximum use fees that the Board may charge and collect. Article 7532 provides that the enumerated fees shall be paid to the Board upon each application for a permit, while Article 7534 would limit the maximum fees to \$1,500 on an entire project. If Article 7534 was upheld it could lead to one applicant either paying the entire fee for a project, or the Board attempting to make some sort of division between the applicants based upon the number of uses each applied for and the amount of water to be diverted to each use by each applicant. We find no authorization or direction for such mathematical calculations.

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We find that Articles 7532 and 7534 are in irreconcilable conflict and that Article 7534 was impliedly repealed under Section 7, of the Acts of 1925. We are of the opinion, therefore, that the maximum use fees prescribed by Article 7532 are applicable to each application for a permit to acquire a water right.

SUMMARY

Article 7532, V.C.S., and not Article 7534, V.C.S., governs the Texas Water Rights Commission on assessing and collecting fees upon applications for permits to acquire water rights. Articles 7532 and 7534 being in conflict, Article 7534 was impliedly repealed by the general repealing clause contained in Acts 1925, 39th Leg., ch. 136, p. 342.

Very truly yours,

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MS:bp

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